

REQUIRES MONITORING
OR STAFF ACTION _____

COMMISSION DIRECTIVE

ADMINISTRATIVE MATTERS	<input type="checkbox"/>	DATE	<u>January 10, 2006</u>
MOTOR CARRIER MATTERS	<input type="checkbox"/>	DOCKET NO.	<u>2005-57-C - -</u>
UTILITIES MATTERS	<input checked="" type="checkbox"/>		_____

SUBJECT:

DOCKET NO. 2005-57-C - Joint Petition for Arbitration on Behalf of NewSouth Communications, Corporation, NuVox Communications, Incorporated, KMC Telecom V, Incorporated, KMC Telecom III, LLC and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Incorporated Pursuant to Section 252(b) of the Communications Act of 1934, As Amended – Discuss this matter with the Commission.

COMMISSION ACTION:

Mr. Chairman, with respect to Docket 2005-57-C, the Joint Petition for Arbitration of NewSouth Communications Corporation, NuVox Communications, Incorporated, and others, I have the following motion.

BellSouth has moved the Commission to overrule the Hearing Officer's ruling of September 9, 2005, and the parties have jointly asked the Commission to resolve the matter of whether Hamilton Russell has a conflict of interest which prevents him from testifying in this case. I move that the Commission deny BellSouth's motion to overrule the Hearing Officer. The Commission has no basis for excluding Mr. Russell's rebuttal testimony altogether.

I also move that BellSouth be given ten days to prefile its surrebuttal testimony from the date that an order is issued in this matter, and that the staff set a hearing in this matter at an appropriate date thereafter. At the hearing, the parties can introduce their testimony into the record, and the Commission will hear any objections to specific portions of Mr. Russell's testimony which BellSouth may decide to present.

As to the parties' request that the Commission resolve "the conflict of interest matter", I move that the Commission treat this request as a request for guidance as to the admissibility of testimony, and that the Commission offer the parties the following advice:

1. The Commission also agrees that, to the extent Russell gives testimony which seeks to advocate a position, such testimony would also appear to conflict with his duty of loyalty to BellSouth, and that BellSouth could object to the testimony on those grounds.
2. The Commission also holds that such advocacy could take place on the witness stand, and is not limited to formal argument presented by counsel.
3. If Mr. Russell *were* found to advocate positions opposed to BellSouth in some part of his rebuttal testimony or his hearing testimony, BellSouth would be entitled to object to the introduction of that part of his testimony, because allowing its introduction would amount to the Commission's sanctioning a violation of the Rules of Professional Conduct.
4. At this time, however, the Commission does not express any opinion as to whether any part of Mr. Russell's testimony is objectionable. No specific objections have been raised to Mr. Russell's testimony, and the Commission cannot take it upon itself to review his testimony and determine what parts of it, if any, are objectionable.
5. The Hearing Officer was correct in holding that BellSouth must make specific objections to Mr. Russell's testimony when it is offered into the record at the hearing. After hearing argument from all parties concerned, the Commission will rule on those objections.

PRESIDING

Mitchell

Session: Regular

MOTION

YES

NO

OTHER

Time of Session 2:30 P.M.

CLYBURN

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FLEMING

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HAMILTON

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HOWARD

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MITCHELL

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MOSELEY

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WRIGHT

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APPROVED _____

APPROVED STC 30 DAYS _____

ACCEPTED FOR FILING _____

DENIED _____

AMENDED _____

TRANSFERRED _____

SUSPENDED _____

CANCELED _____

SET FOR HEARING _____

ADVISED _____

CARRIED OVER _____

RECORDED BY SCHMIEDING